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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,225	06/20/2003	Robert F. Burkholder	JK01507	9167
28268 7590 12/20/2007 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			EXAMINER FRANTZ, JESSICA L	
			ART UNIT 3746	PAPER NUMBER
			MAIL DATE 12/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/601,225	Applicant(s) BURKHOLDER ET AL.	
	Examiner Jessica L. Frantz	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 and 40-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 13 and 41-43 rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan (6,375,437) in view of Lane (4,400,187). Nolan teaches an air compressor assembly, comprising: an air tank (24) for containing air at an elevated pressure. The air tank having an air inlet port (connected to line 28) and an air outlet port (connected to line 32); an air compressor (14) for supplying air for storage in the air tank through a first tubing (28), the first tubing connecting the air inlet port to the air compressor (clearly seen in figure 1); a second tubing (32) connecting the air outlet port to a manifold assembly (36), the compressed air in the air tank is discharged through the air outlet port, the second tubing, and the manifold assembly during air usage (col. 3 lines 33-43). The air compressor assembly is of a portable type; the air inlet port is positioned at a top wall of the air tank (clearly seen in figure 1).

3. Referring to claims 41-43 Nolan teaches the supplying of an air tank for storing air at an elevated pressure and discharging condensate within the air tank, the air being released from the air tank during air usage; the discharged condensate and compressed air are routed through an air outlet tubing, to an air powered tool (col. 1

lines 6-9). The discharging step is performed so that the condensate is discharged in small amounts not harmful to the air powered tool (depending on orientation of the apparatus, condensate would inherently discharge along with the compressed air due to gravity and the location of the discharge port).

4. Nolan fails to teach the air outlet port to the compressor positioned at a bottom portion of the air tank. Lane teaches an air outlet port (in communication with valve 18) positioned at a bottom portion (clearly seen in figure 1, outlet port is positioned at what appears to be the half-way point of the tank and thus, could be considered the bottom half or at the very least the bottom two-thirds of the tank. With the use of hollow conduit 10, the air tank could be positioned in such a way that the outlet port way at the lowest point of the tank as well, due to the moisture filtering capabilities) of a compressed air tank (16) and an open end of a hollow conduit (10) positioned at the bottom portion of the air tank (clearly seen in figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the air tank taught by Nolan to incorporate the air outlet port and hollow conduit as taught by Lane as a means of filtering out unwanted moisture in the compressed air (Lane, Abstract).

5. Claims 15 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal (5,399,072) in view of Lane (4,400,187). Westphal teaches an air compressor assembly, comprising: an air tank (14) for containing air at an elevated pressure. The air tank has an air access port therein (connected to the pressure gauge 24), an air compressor (32) for supplying air for storage in the air tank, a first tubing (36) connecting the air compressor to a manifold assembly (28), and a second tubing

(clearly seen in figure 4 connecting 28 to the tank) connecting the manifold assembly to the air access port. The compressed air in the air tank is discharged through the air access port, the second tubing, and the manifold assembly during air usage (col. 4 lines 46-64). The air Compressor assembly is of a portable type.

6. Westphal fails to teach the air outlet port to the compressor positioned at a bottom portion of the air tank. Lane teaches an air outlet port (in communication with valve 18) positioned at a bottom portion (clearly seen in figure 1, outlet port is positioned at what appears to be the half-way point of the tank and thus, could be considered the bottom half or at the very least the bottom two-thirds of the tank. With the use of hollow conduit 10, the air tank could be positioned in such a way that the outlet port way at the lowest point of the tank as well, due to the moisture filtering capabilities) of a compressed air tank (16) and an open end of a hollow conduit (10) positioned at the bottom portion of the air tank (clearly seen in figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the air tank taught by Nolan to incorporate the air outlet port and hollow conduit as taught by Lane as a means of filtering out unwanted moisture in the compressed air (Lane, Abstract).

7. Claims 3-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan in view of Lane, Moore (4,514,019) and Grainger (Industrial and Commercial Equipment and Supplies, General Catalog No. 308, pgs. 1600-1603 (1991)). The combination of Nolan and Lane teach the limitations of claims 1, 2 and 13, but fail to teach the portable air compressor assembly is enclosed in a shroud and shroud is made of plastic. The shroud includes a handle to allow the portable air compressor assembly

to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

8. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60) and the shroud is made of plastic (col. 4line.40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve (167) for preventing air from flowing from the air tank to the air compressor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nolan to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract). Grainger teaches the various types of compressor assemblies which are well known in the art.

9. Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Lane, Moore (4,514,019) and Grainger (Industrial and Commercial Equipment and Supplies, General Catalog No. 308, pgs. 1600-1603 (1991)). The combination of Westphal and Lane teach the limitations of claims 15 and 16, but fail to teach the portable air compressor assembly is enclosed in a shroud and the shroud is made of plastic. The shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port

positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

10. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60) and the shroud is made of plastic (col. 4 line 40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air inlet port includes a check valve (167) for preventing air from flowing from the air tank to the air compressor. The air access port located on the bottom of the tank, given the orientation of the apparatus is not fixed and given its portable nature, is usable under different orientations. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract). Grainger teaches the various types of compressor assemblies which are well known in the art.

11. Claims 28, 29 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view of Strubel (4,828,131). Westphal teaches an air compressor assembly, comprising: an air tank (14) for containing air at an elevated pressure. The air tank having an air access port therein (connected to the pressure gauge 24). An air compressor (32) for supplying air for storage in the air tank. A first tubing (36) connecting the air compressor to a manifold assembly (28). A second tubing (clearly seen in figure 4 connecting 28 to the tank) connecting the manifold assembly to the air access port. The compressed air in the air tank is discharged through the air access

port, the second tubing, and the manifold assembly during air usage (col. 4 lines 46-64).

The air compressor assembly is of a portable type and the air access port is positioned at a top wall of the air tank (clearly seen in figure 1).

12. Westphal fails to teach the air access port being an open end of a centrally hollow conduit positioned inside the air tank. Strubel teaches an air access port (6) being an open end of a centrally hollow conduit (5) positioned inside the air tank (1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the hollow conduit as taught by Strubel as a means of making possible the greatest emptying of fluid from the tank (col. 1, lines 45-52).

13. Claims 30-38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westphal in view-of Strubel and in further view of Moore. Westphal in view of Strubel teach the limitations of claims 28, 29 and 39, but fail to teach the portable air compressor assembly is enclosed in a shroud, the shroud is made of plastic, wherein the shroud includes a handle to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor assembly to be controlled. The air outlet port positioned at a bottom wall of the air tank and the air inlet port including a check valve for preventing air from flowing from the air tank to the air compressor.

14. Moore teaches a portable air compressor assembly is enclosed in a shroud (54, 56 & 60), the shroud is made of plastic (col. 4 line 40). The shroud includes a handle (68) to allow the portable air compressor assembly to be lifted and transported from place to place and a control panel to allow operation of the portable air compressor

assembly to be controlled. The air inlet port includes a check valve (167) for preventing air from flowing from the air tank to the air compressor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the plastic shroud, handle and control panel as taught by Moore as a means creating a portable self-contained apparatus (Abstract).

Response to Arguments

15. Applicant's arguments filed 10/9/2007 have been fully considered but they are not persuasive.

16. Applicant argues that there is no motivation to combine the teaching of Lane with either Nolan or Westphal. Examiner kindly disagrees. As clearly shown by Lane and as discussed above, it is known in the art to position the outlet towards the bottom of the tank. Also, as admitted in the written description of the Applicant (see paragraphs [0018, 0021 and 0024]) the location of the outlet port/access port may be located at other positions "without departing from the scope and spirit of the present invention." Relocating the outlet is a mere change in location and is fully supported by the teachings figure 1 of lane as discussed above. The claims as stated merely recite a position of the outlet at a bottom portion of the tank which is clearly shown by Lane. Lane doesn't teach away just because he also teaches the inclusion of element 10.

17. Applicant further argues that the applied Strubel reference doesn't motivate one to combine it with the Westphal reference because Strubel teaches a liquid tank. Examiner finds this unpersuasive because the tank taught by Strubel contains pressurized/compressed gas and therefore is easily capable of use in conjunction with

an air compressor. Furthermore, Strubel teaches a fluid container as does Westphal. One looking to improve a fluid container may quite readily look to other fluid containers for suggestions. It is also unnecessary for the prior art to address the same problems identified by the Applicant as long as the structure taught by the prior art satisfies the limitations of the claims and there is motivation to combine the references. As cited above it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Westphal to incorporate the hollow conduit as taught by Strubel as a means of making possible the greatest emptying of fluid from the tank (col. 1 lines 45-52).

18. A recitation with respect to the material intended to be worked upon by a claimed apparatus does not impose any structural limitations upon the claimed apparatus which differentiates it from the prior art apparatus satisfying the structural limitations of the claims, as is the case here. MPEP ss 22.25.

Conclusion

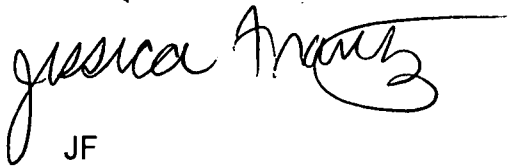
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Frantz whose telephone number is 571-272-5822. The examiner can normally be reached on Monday through Friday 8:30a.m.-5:00p.m. E.S.T..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

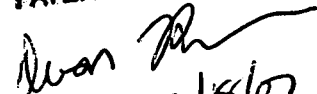
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JF

DEVON C. HANCOCK
PATENT EXAMINER


12/18/07